

1993

Broadbent v. Broadbent : Brief of Appellant

Utah Court of Appeals

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EXHIBIT F

930445

IN THE UTAH COURT OF APPEALS

HELEN S. BROADBENT,	:	ADDENDUM TO
	:	BRIEF OF APPELLANT
Plaintiff/Appellee,	:	
	:	
vs.	:	Court of Appeals
	:	No. 930455-CA
ROSS BROADBENT,	:	
	:	
Defendant/Appellant.	:	

- | | | |
|-----------|---|---|
| EXHIBIT A | - | DECREE OF DIVORCE dated May 7, 1986 |
| EXHIBIT B | - | JUDGMENT dated May 12, 1987 |
| EXHIBIT C | - | SETTLEMENT AGREEMENT dated March 16, 1988 |
| EXHIBIT D | - | ORDER dated January 14, 1993 |
| EXHIBIT E | - | MEMORANDUM DECISION dated April 28, 1993 |
| EXHIBIT F | - | FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE COURT dated June 28, 1993 |

Utah

MAY 06

IN THE UTAH COURT OF APPEALS

HELEN S. BROADBENT,
Plaintiff/Appellee,
vs.
ROSS BROADBENT,
Defendant/Appellant.

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**ADDENDUM TO
BRIEF OF APPELLANT**

Court of Appeals
No. 930455-CA

EXHIBIT A	-	DECREE OF DIVORCE dated May 7, 1986
EXHIBIT B	-	JUDGMENT dated May 12, 1987
EXHIBIT C	-	SETTLEMENT AGREEMENT dated March 16, 1988
EXHIBIT D	-	ORDER dated January 14, 1993
EXHIBIT E	-	MEMORANDUM DECISION dated April 28, 1993
EXHIBIT F	-	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE COURT dated June 28, 1993

Tab A

THOMAS N. ARNETT, JR. (0128)
Attorney for Plaintiff
528 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 363-5650

FILED
Karin Busch

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

BA 206 NO 3641

5-13-86 - 8:28 a.m.

HELEN S. BROADBENT,

:

Plaintiff,

:

DECREE OF DIVORCE

vs.

:

ROSS BROADBENT,

:

Defendant.

:

Civil No. D81-173
Judge Timothy R. Hanson

The above-entitled action came on regularly for hearing before the Honorable Scott Daniels, Judge of the above-entitled Court, sitting in place of Judge Timothy R. Hanson, on Wednesday, the 23rd day of April, 1986, at the hour of 1:30 p.m., the plaintiff appearing in person and through her attorney Thomas N. Arnett, Jr., and no one appearing on behalf of the defendant, counsel for plaintiff having delivered to the Court a Stipulation and Property Settlement Agreement entered into by the parties, wherein the defendant agreed to waive all further notice, consented that his default may be entered, and further consented that the matter may be heard by the Court on its merits at any time, and the Court having duly entered the default of the

defendant, having heard the sworn testimony of the plaintiff, and good cause appearing therefore, and having heretofore made and entered its Findings of Fact and Conclusions of Law;

NOW, THEREFORE;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That the bonds of matrimony now and heretofore existing between the parties are dissolved, and a Decree of Divorce is granted to the plaintiff, to become final upon the date of entry hereof.

2. That the plaintiff is awarded the care, custody and control of the minor child of the parties, subject to defendant's rights of visitation which shall include regular visits of once during the week, which shall generally be Wednesday after school until bedtime, and weekends at least two times per month from Friday after school until Sunday evening. That in the event that either parent moves more than 50 miles from Salt Lake City, the visitation right shall be rearranged to provide equivalent visiting time. That additionally, the holidays with the minor child shall be alternated between the parties from year to year, and the minor child shall spend at least two weeks of the summer vacation with the defendant. That visitation on principal holidays, birthdays, and vacation shall be arranged between the parties and alternated with the other party in the following year.

3. That the defendant is ordered to pay to the plaintiff child support in the sum of \$100.00 in March, 1986, \$200.00 in

April, 1986, \$300.00 in May, 1986, and \$400.00 in June, 1986, and \$400.00 each month thereafter. That in addition, the defendant is ordered to provide standard health insurance for the benefit of Christian. That the defendant is ordered to acquire and pay for a life insurance policy upon his own life for the benefit of Christian Broadbent, in the amount of \$75,000.00 beginning in July, 1986. That the defendant's child support obligation shall continue until Christian reaches the age of 18 years or has graduated from high school, whichever comes last.

4. That the defendant is ordered to pay two-thirds (2/3) of the dental and medical care provided to Christian, which is not covered by the health insurance. That such services shall be agreed upon prior to treatment, except in the case of emergency.

5. That the defendant is ordered to pay one-half (1/2) of the costs for lessons and for summer school.

6. That the defendant is ordered to pay to the plaintiff the sum of \$300.00 per month, beginning July 30, 1986. That the defendant's obligation for this payment shall continue for a period of three years, or until the plaintiff remarries or cohabits with an unrelated member of the opposite sex as defined by Section 30-3-5, Utah Code Annotated (1953 as amended).

7. That each of the parties is awarded the personal property now in his or her possession, and to include household furniture and other furnishings according to the addendum attached to the parties' Stipulation, with the plaintiff to retain the

porcelain horses and the woman with child, and the defendant the Chinese Quon Yin figure. That the plaintiff is ordered to deliver said items to the defendant, upon approval of the Decree of Divorce.

8. That the defendant is ordered to transfer 322,000 shares from the family trust, so that after the divorce, the plaintiff will own a total of 360,000 shares of International Connections.

9. That in the event any stock in International Connections currently pledged to Arthur Hackin diverts to the defendant, it shall be divided equally between the parties. That in the event plaintiff receives any payments based upon an increase on the value of American Methyl stock ~~which~~, such payments shall be the sole property of plaintiff.

10. That both plaintiff and defendant shall each retain such other investments, stocks and business interests as they may own or acquire.

11. That each party is ordered to assume and pay his or her own separate debts and hold the other party harmless therefrom.

12. That each party is ordered to assume and pay his or her own attorney's fees and costs incurred herein.

13. That the plaintiff is awarded the use of her maiden name, Helen Schumann.

DATED this 7 day of May, 1986.

BY THE COURT:

Scott Daniels
District Judge

Approved as to form:

Ellen Maycock

ATTEST
H. DIXON STANLEY
Clerk
Karen Busch
Deputy Clerk

Tab B

MAY 12 1987

THOMAS N. ARNETT, JR. (0128)
Attorney for Plaintiff
528 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 363-5650

H. Dixon Hindrey, Clerk 3rd Dist. Court
Helen L. Hanson
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----ooo0ooo-----
HELEN S. BROADBENT, : Br 213 NO. 1141
Plaintiff, : 5-13-87-8:19 am
vs. : JUDGMENT
ROSS BROADBENT, : Civil No. D81-173
Defendant. : Judge Timothy R. Hanson
-----ooo0ooo-----

Plaintiff's Order to Show Cause came on regularly for hearing before the Honorable Sandra Peuler, Commissioner of the above-entitled Court, on Tuesday, the 3rd day of March, 1987, at the hour of 2:00 p.m., plaintiff appearing in person and through her attorney Thomas N. Arnett, Jr., and the defendant appearing in person and through his attorney Ellen Maycock of the firm of Kruse, Landa & Maycock, and the Court having heard the arguments and proffers of proof of counsel, having considered the contents of the Court's file, having made its recommendation in open Court, neither party having objected thereto within ten days, and good cause appearing therefore;

NOW, THEREFORE;

IT IS HEREBY ORDERED AND ADJUDGED as follows:

JUDGMENT

1. That the plaintiff be and is hereby awarded judgment against the defendant in the sum of \$5,300.00, representing child support and alimony arrearages through February 28, 1987.

2. That the plaintiff be and is hereby awarded judgment against the defendant in the sum of \$1,503.00, representing medical and dental bills incurred for the minor child of the parties, which have been paid by the plaintiff due to the defendant's failure to obtain health insurance as ordered in the Decree of Divorce.

3. That the plaintiff be and is hereby awarded judgment against the defendant in a sum of \$393.50, representing one-half of the costs of lessons and summer school for the benefit of the minor child of the parties.

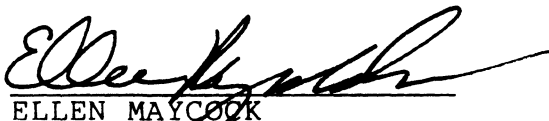
4. That the defendant be and is hereby ordered to use his best efforts to obtain appropriate employment so that he can comply with the financial requirements of the Decree of Divorce.

DATED this 12 day of May, 1987.

BY THE COURT:


DISTRICT JUDGE

Approved as to form:


ELLEN MAYCOOK
Attorney for Defendant

ATTEST

H. DYON HINDLEY

Clerk

By



Tab C

58-173
EN S. Broadbent
vs
Ross L. Broadbent
Hanson

CHILD SUPPORT AND ALIMONY SETTLEMENT AGREEMENT

FILED
DISTRICT COURT

This agreement by and between Ross L. Broadbent of 2335 East 2100 South and Helen Schumann of 1805 Severn, both in Salt Lake City, Utah, is for the settlement of legal obligations for child support and alimony which were included in the divorce decree between the parties.

BY Carlo L. Litterer
CLERK

WHEREAS Ross Broadbent had agreed to pay the sum of four hundred dollars (\$400.00) per month for the support of Christian Broadbent until he became an adult and additionally to pay the sum of three hundred dollars (\$300.00) in alimony to Helen Schumann for a period of three years, and upon such agreement Helen Schumann obtained a judgement for some portion of that amount which has become past due, and whereas Ross Broadbent has been unable to pay the amounts agreed upon, it is hereby agreed as follows:

1. Ross Broadbent will use his present position to establish Helen Schumann with her own vending business based upon small three-bin candy vending machines. In exchange for a full release from all past, present or future obligations relating to child support or alimony, Ross Broadbent hereby agrees provide Helen Schumann with vending machines under the following terms.

A. Ross Broadbent agrees to provide Helen Schumann with a total of eighty (80) machines placed in locations and operating. The minimum time schedule for providing the machines shall be;

PERIOD FOR PUTTING MACHINES IN OPERATION...

Month #1....2 Machines assembled, filled and placed in operation
Month #2....2 Machines assembled, filled and placed in operation
Month #3....3 Machines assembled, filled and placed in operation
Month #4....3 Machines assembled, filled and placed in operation
Month #5....4 Machines assembled, filled and placed in operation
Month #6....4 Machines assembled, filled and placed in operation
Month #7....5 Machines assembled, filled and placed in operation
Month #8....5 Machines assembled, filled and placed in operation
Month #9....5 Machines assembled, filled and placed in operation
Month #10...5 Machines assembled, filled and placed in operation
Month #11...6 Machines assembled, filled and placed in operation
Month #12...6 Machines assembled, filled and placed in operation
Month #13...6 Machines assembled, filled and placed in operation
Month #14...6 Machines assembled, filled and placed in operation
Month #15...9 Machines assembled, filled and placed in operation
Month #16...9 Machines assembled, filled and placed in operation

B. As machines are placed monthly and in operation the keys will be turned over to Helen Schumann who will then assume control, management and ownership of the machines. (The machines will be accompanied by a letter transferring and guaranteeing ownership to Helen, the serial numbers of the machines and all additional ownership information such as location, report forms, candy, etc.) Ross Broadbent will arrange for Helen Schumann to have direct access to wholesale suppliers for products, machine parts and insurance.

C. In the event Ross Broadbent fails to keep the schedule shown above, the net income from the placed machines (after candy costs, charity payment, management, repairs and travel expenses, will be credited directly toward Ross Broadbent's current legal obligation to Helen Schumann and Christian Broadbent. Once all 80 machines have been placed in operation, Ross Broadbent will have no further child support or alimony and all past obligations or judgments will be considered paid in full.

D. The first machines will be placed in operation and turned over to Helen Schumann thirty (30) days after this agreement is signed and notarized by the parties.

E. Until such time as 10 machines have been placed in operation, Ross Broadbent shall also pay four hundred (\$400.00) dollars cash per month to Helen Schumann. After ten (10) machines are in operation Ross Broadbent shall then pay two (\$200.00) dollars cash per month until a total of twenty (20) machines are in operation. After 20 machines are operating Ross Broadbent will no longer have additional cash obligations.

F. In the event Helen should become incapacitated for whatever reason, Ross agrees to have the machines serviced at his expense until such time as Helen regains consciousness.

G. This is the full agreement between the parties.

Agreed to this 16th day of March, 1988

Helen Schumann
Helen Schumann

Ross Broadbent
Ross Broadbent

On this 16th day of March 1988 Helen Schumann and Ross Broadbent did personally appear before me and sign this document in my presence of their own free will and choice and each stated that they wish to be bound by the terms outlined herein.

Deborah J. [Signature]
Notary Public

Residing at: 566 [Signature]

My Commission Expires: 4-10-88

Tab D

JAN 1 1993

SALT LAKE COUNTY

James L. Thompson (#5807)
Attorney for Plaintiff
410 East Center Street
Bountiful, Utah 84010
Telephone (801) 292-0560

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

HELEN S. BROADBENT,

Plaintiff,

vs.

ROSS BROADBENT,

Defendant,

ORDER

Civil No. D81-173

Judge Timothy R. Hanson

Before the Court is the Defendant's Objection to Writs of Garnishment issued by the Clerk on October 29, 1992, based upon the Court's Judgment dated May 12, 1987. Such Writs were issued in the amount of \$13,316.82, representing principal and interest in the statutory amount on the aforementioned Judgment. Defendant objected to such Writs and requested a hearing challenging the same. On November 23, 1992, the parties appeared before the Court, Plaintiff represented by James L. Thompson, and Defendant represented by M. Joy Douglas, and argued their respective positions in relation to the objections to the garnishments filed by Defendant. Following argument, the Court requested legal Memoranda from counsel relating to the

issues raised during the course of oral argument. The matter was to be brought to the Court's attention, and was therefore diaried on December 17, 1992. The Court, having heard the arguments of counsel and having considered the Memoranda submitted by the same, makes its Findings of Fact and Conclusions of Law, and Orders as follows:

FINDINGS OF FACT

1. On May 7, 1986, this Court granted a Decree of Divorce to the parties, awarding custody of the minor child of the marriage, Christian Broadbent, to Helen Broadbent (Schumann), the Plaintiff herein.

2. In the Decree of Divorce this Court ordered Defendant to pay Plaintiff, among other things, Child Support and Alimony, and other amounts for the care and maintenance of their son.

3. Defendant failed and refused to pay such sums as ordered by this Court, and on May 12, 1987, the Court entered its Judgment against Defendant and in favor of Plaintiff in the principal amount of \$7,196.50.

4. The parties entered into a "Child Support and Alimony Settlement Agreement," dated March 16, 1988, the consideration for which was identified: "In exchange for a full release from all past, present or future obligations relating to child support or alimony, Ross Broadbent hereby agrees [to] provide Helen Schumann with vending machines under the following terms."

5. The Settlement Agreement did not result in a Court Order and the Court has not authorized the substitution of vending machines for child support, even if the parties otherwise legitimately agree, and Plaintiff received no benefit under the Settlement Agreement.

6. Plaintiff's calculations set out in the Writs of Garnishment of the amounts due under the Judgment dated May 12, 1987, are accurate and appropriate, which amount is \$13,316.82 in principal and interest due and owing as of October 12, 1992. Plaintiff has necessarily incurred costs and attorney fees in the amount of \$2,201.20 (through and including the filing of Plaintiff's Reply Brief) resulting from this proceeding to collect the amounts due under the Court's Judgment. Further interest on the Judgment amount from October 12, 1992 through December 12, 1992, amounts to \$253.65, plus an additional \$5.19 each day thereafter until paid.

CONCLUSIONS OF LAW

1. To the extent that the Defendant asserts that the stipulation entered into between the parties in the Settlement Agreement prohibits the issuance of the Writs of Garnishment based upon Judgments earlier obtained, the Settlement Agreement is invalid and without any legitimate consideration.

2. The Writs of Garnishment are based upon a duly entered Judgment, which is enforceable through post-judgment collection proceedings, such as a Writ of Garnishment.

3. Defendant's claims that the amounts sought through the Writs of Garnishment are excessive is unsupported. There is no admissible evidence in the materials submitted by Defendant suggesting that Plaintiff's calculations as set forth in the Writs of Garnishment are inappropriate. Such calculations are, therefore, accurate.

ORDER

Based on the foregoing and good reason appearing therefore it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court overrules the Defendant's Objections to the Writs of Garnishment finding them to be without merit.

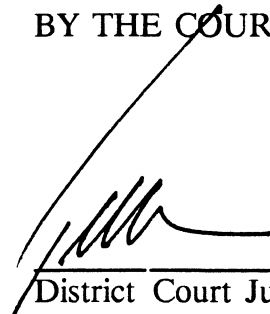
2. Plaintiff may proceed to obtain the funds being held by the parties garnished, to satisfy the outstanding Judgments heretofore awarded in favor of the Plaintiff and against the Defendant.

3. Plaintiff may augment the amounts of such outstanding Judgments by her costs of collection, including a reasonable attorney's fee, making the total amount of the Judgment of May 12, 1992, \$15,865.09, including interest through December 31, 1992, plus an additional \$5.19 each day thereafter until paid.

4. Counsel for Plaintiff is to prepare an appropriate Order in conformity with the Court's Minute Entry Decision, and submit the same to the Court for review and signature pursuant to the Code of Judicial Administration.

DATED this 14 day of January, 1993.

BY THE COURT:



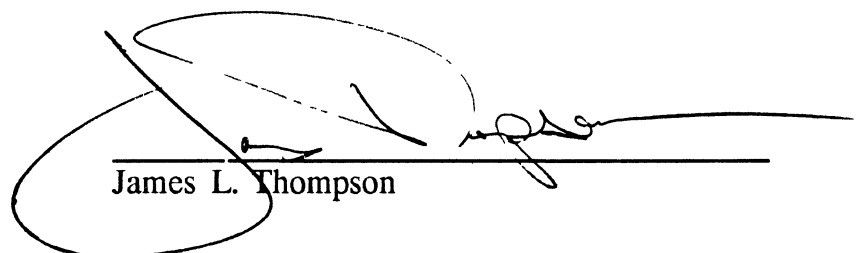
District Court Judge

Laurel Carlini
attest

CERTIFICATE OF MAILING

I certify that I caused the foregoing to be served upon Defendant by mailing a true copy of the same, first class United States mail, to the following on this 31st day of December, 1992:

M. Joy Douglas, Esq.
CORPORON & WILLIAMS, P.C.
310 South Main Street, Suite 1400
Salt Lake City, Utah 84101



James L. Thompson

Tab E

APR 28 1993

E. A. Thompson
SALT LAKE COUNTY
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

HELEN S. BROADBENT,	:	MEMORANDUM DECISION
Plaintiff,	:	CASE NO. D-81-173
vs.	:	
ROSS BROADBENT,	:	
Defendant.	:	

The above-referenced matter is before the Court for decision relating generally to amounts claimed by the plaintiff as unpaid and presently due under the terms of an original divorce Decree entered by this Court on May 7, 1986. Since the entry of the original Decree, this Court on May 12, 1987 signed a Judgment awarding plaintiff certain sums as arrearages and made certain orders requiring the defendant to comply with the financial requirements of the Decree. To the extent there is a dispute between the parties as to whether or not there have been payments on the May 12, 1987 Judgment, the Court finds that there has been none and the amount due under the May 12, 1987 Judgment is, including interest at the rate of 12% per annum through March 10, 1993, \$13,965.84. All remaining claims allegedly accrued since the May 12, 1987 Judgment.

The Court in relation to that Judgment has awarded attorney's fees in an amount of \$2,201.20 as was contained in the Order of

January 14, 1993. To the extent that there is any question regarding the status of the May 12, 1987 Judgment and any credits claimed due against that Judgment, the Court finds that there are none and finds in favor of the plaintiff and against the defendant on those issues.

It also appears to the Court that there continues to be a continuing objection to the Writs of Execution, suggesting that the Writs of Execution are improper, inasmuch as there is an alleged agreement, at least asserted by the defendant, to resolve outstanding arrearages and that the amounts claimed under the Writs of Execution are excessive.

As to the question of whether or not the Writs were proper, the Court determines to the extent that it has not already done so, that the Writs of Execution are proper. This Court declined to accept, enforce or otherwise consider the so-called settlement agreement between the plaintiff and the defendant, and has heretofore ruled on those issues, and the Court has not been advised of any legitimate reason why its ruling should be modified.

As to the amounts that are due the plaintiff from the defendant from and since the May 12, 1987 Judgment, excluding interest on the May 12, 1987 Judgment and the previously awarded amount of attorney's fees, this Court determines as follows.

Alimony is owed the plaintiff from the defendant in the principal amount of \$8,035.00. Added to that is interest on the amount of alimony from the date that it was due on a periodic basis, and at the statutory interest rate. The Court finds in favor of the plaintiff, and finds the plaintiff's testimony and evidence relating to unpaid alimony persuasive, and the defendant's testimony unpersuasive.

On the amount of child support that is due and payable, the Court finds that child support due the plaintiff by the defendant as of November 1992 is \$25,065.00. Added to that is interest at the statutory rate from the due date of each interest payment. On the issue of unpaid child support, the Court finds the plaintiff's testimony and evidence persuasive on the amounts due, and the defendant's evidentiary offerings unpersuasive.

The plaintiff seeks unpaid expenses that were ordered to be paid by the defendant to the plaintiff as a result of the Decree of Divorce, and incidental expenses that she has incurred as a result of her checking and savings accounts being garnished by defendant's creditors for sums that the defendant was to pay as a result of the Decree.

On the issue of unpaid expenses, the Court finds that there is presently due and owing \$8,697.51 as asserted by the plaintiff.

The plaintiff is entitled to Judgment in those amounts for unpaid expenses and consequential expenses as a result of the defendant's failure to comply with the Court's original Decree of Divorce. The plaintiff's evidence is persuasive on those issues, whereas the Court finds the defendant's evidence lacking and unpersuasive. Plaintiff is entitled to statutory interest on the amounts due for unpaid expenses as of the date that the expense was incurred.

The Decree of Divorce specifically provided that the defendant will provide standard health care insurance for the benefit of the minor child, Christian. The plaintiff asserts that the defendant has not provided the standard health care insurance, and that she was required to do so to insure that the child, Christian, who suffers from some substantial physical problems, did not become uninsurable. There is evidence that the defendant from time to time may have provided some insurance but that evidence fails in its evidentiary value due to the vague nature of the testimony offered by the defendant regarding the times that insurance was available and the manner in which it was provided, if at all.

The evidence supports and the Court finds that the plaintiff, to insure the continued insurability of the minor child, has provided at her own expense insurance coverage and that the amount

of funds that she has paid to insure the health insurance remained in effect is the principal sum of \$6,900.00. The Court finds that she is entitled to that amount from the defendant in that she has paid the defendant's obligation to insure that the child's insurance coverage is continuing. The plaintiff is entitled to interest at the statutory rate from and after the dates that the health insurance premiums were paid by the plaintiff.

The plaintiff further asserts that the defendant has failed to comply with that portion of the Decree that required him to acquire and pay for a life insurance policy on his own life for the benefit of the minor child in an amount of not less than \$75,000.00, commencing in July of 1986. Certain policies have been in effect on the life of the defendant in accordance with the Decree of Divorce, but those policies have been paid for, purchased and maintained by the plaintiff. Defendant's claims that there were other policies naming a trust as beneficiary are unpersuasive. No trust has been offered in evidence, and even if the trust provides as the defendant suggests, there is no guarantee that the funds would be available to the minor child as required by the original Decree of Divorce.

The evidence shows and the Court finds that the plaintiff has paid a total of \$9,246.00 through November of 1992 for life

insurance premiums on the defendant's life. The Court finds the plaintiff's evidence persuasive on this issue, and the defendant's evidence unpersuasive. In addition to the principal amount of \$9,246.00 through November 1992, the plaintiff is entitled to interest at the statutory rate from the date that the expense was incurred.

Further on that subject, the defendant is advised that the Court expects that he will no later than forty-five (45) days from the date of this Memorandum Decision obtain and pay for appropriate life insurance, and supply to the plaintiff and her attorney proof of said insurance, all as to comply with the original Decree of Divorce. Failure to do so without adequate explanation will require this Court to consider issues of contempt and the potential sanctions therefor, including incarceration, should there be evidence that the defendant continues to ignore the Court orders regarding his responsibility towards the plaintiff and the minor child.

The plaintiff also seeks attorney's fees. The Court has determined that the amount of attorney's fees of \$2,201.20 is appropriate for the collection of the May 12, 1987 Judgment. Those attorney's fees may be reduced to a Judgment and interest will accrue in accordance with the statutory rate thereon.

The plaintiff seeks an award of attorney's fees and costs in an additional amount of \$4,145.00 for additional fees and costs related to the defendant's objections to the amounts contained in the Writs of Garnishment and demands for evidentiary hearings to recalculate and offer evidence relating to the amount claimed by the plaintiff.

The Court is satisfied that the original attorney's fees and costs sought by the plaintiff are appropriate, and awards additional attorney's fees and costs in accordance with Exhibit "C" (the Affidavit of plaintiff's counsel), as attached to the plaintiff's closing statement brief. The plaintiff has substantially prevailed on all issues, the defendant's response has been unpersuasive, and appears to be calculated merely to frustrate the attempted collection of any amounts that have long been due and owing to the plaintiff from the defendant.

The defendant has done little, if anything, to comply with the Court's orders in the original Decree of Divorce. He has made insignificant contributions to the financial needs or other welfare of the child, and has basically left the total responsibility for those obligations to the plaintiff. The defendant's efforts to further frustrate the plaintiff's attempted collection of at least some of the amounts that she is rightfully entitled appear to the

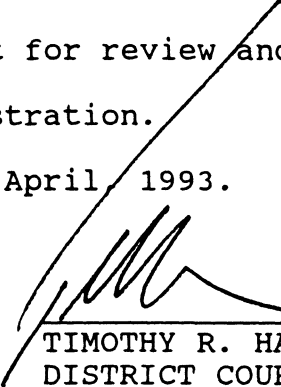
Court to border upon bad faith, and while the Court does not make such a specific finding, it does award attorney's fees on the basis that the expenses and fees have been incurred as a result of the demands of the defendant, and that the defendant has failed to prevail. The plaintiff is not in a position to pay the attorney's fees that she has incurred as a result of the defendant's challenge to Garnishments and other matters, as contained herein, and further considering the conduct of the defendant throughout these long proceedings since the divorce Decree was originally entered, and his lack of any meaningful cooperation, the additional attorney's fees are not only warranted, but in this Court's view mandated.

The Court is holding a check issued as a result of a Garnishment in the sum of \$15,052.67 made payable to Helen Broadbent. That check will be made available to the plaintiff's counsel upon the signing of an appropriate Order in conformity with this Memorandum Decision. The proceeds realized from the aforementioned check shall be noted in the Court's file with an appropriate pleading representing a partial satisfaction of the outstanding Judgments. The aforementioned funds are to be applied to the oldest obligations first.

Counsel for the plaintiff is requested to prepare an appropriate set of Findings of Fact, Conclusions of Law, and Orders

relating to the issues discussed in this Memorandum Decision, and submit the same to the Court for review and signature pursuant to the Code of Judicial Administration.

Dated this 28 day of April, 1993.



TIMOTHY R. HANSON
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this 28 day of April, 1993:

James L. Thompson
Attorney for Plaintiff
410 E. Center Street
Bountiful, Utah 84010

M. Joy Douglas
Attorney for Defendant
310 S. Main, Suite 1440
Salt Lake City, Utah 84101

A handwritten signature in cursive script, appearing to read "Evelyn Thompson", is written over a horizontal line.

Tab F

FILED DISTRICT COURT
Third Judicial District

JUN 28 1993

James L. Thompson (#5807)
Attorney for Plaintiff
410 East Center Street
Bountiful, Utah 84010
Telephone (801) 292-0560

By  SALT LAKE COUNTY
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

HELEN S. BROADBENT,)	
)	
Plaintiff,)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW, AND ORDER OF THE COURT
vs.)	
)	
ROSS BROADBENT,)	Civil No. D81-173
)	
Defendant,)	Judge Timothy R. Hanson
)	

Before the Court is the Defendant's Objection to Writs of Garnishment obtained by the Plaintiff pursuant to amounts claimed by the Plaintiff as unpaid and presently due under the terms of an original divorce Decree entered by this Court on May 7, 1986. Defendant objected to such Writs and requested a hearing challenging the validity of the same and the amounts claimed due thereunder. On February 8 and March 8, 1993, the parties appeared at an evidentiary hearing before the Court, Plaintiff represented by James L. Thompson, and Defendant represented by M. Joy Jelte, and argued their respective positions in relation to the objections to the garnishments filed by Defendant. Following such hearing and argument, the Court requested final

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arguments in writing from counsel relating to the issues raised during the course of the hearing. The Court, having heard the testimony of the witnesses, examined the evidence presented by the parties, and heard arguments of counsel and having considered the final arguments submitted by the same, makes its Findings of Fact and Conclusions of Law, and Orders as follows:

FINDINGS OF FACT

1. On May 7, 1986, this Court granted a Decree of Divorce to the parties, awarding custody of the minor child of the marriage, Christian Broadbent, to Helen (Broadbent) Schumann, the Plaintiff herein.

2. In the Decree of Divorce this Court ordered Defendant to pay Plaintiff, among other things, Child Support and Alimony, and other amounts for the care and maintenance of their son; namely, that Defendant maintain health insurance on the child and maintain a policy of life insurance on himself for the benefit of the child, and that Defendant pay portions of medical and other expenses incurred for the benefit of the child.

3. Defendant failed and refused to pay such sums as ordered by this Court, and on May 12, 1987, the Court entered its Judgment against Defendant and in favor of Plaintiff in the principal amount of \$7,196.50, and further ordered the Defendant to comply with the financial requirements of the Decree.

4. There has been no payment made by Defendant to Plaintiff toward the Judgment of May 12, 1987, and no credit is due, and the amount due and owing under such Judgment as of March 10, 1993, including interest thereon at the rate of 12% per annum, is \$13,965.84. Plaintiff is entitled to her costs and attorney's fees in the amount of \$2,201.20 for costs of collection of such amount as was granted in the Court's Order of January 14, 1993, and such amounts are specifically found to be reasonable and appropriate. The Court specifically finds in favor of Plaintiff and against Defendant on all issues relating to the May 12, 1987 Judgment, including the award of attorney's fees, plus interest thereon at the statutory rate.

5. Any claims of satisfaction or payment of any amount due herein pursuant to an alleged Settlement Agreement between the parties are invalid as has been previously ruled by this Court, and all writs issued herein have been obtained properly, and not in excessive amounts.

6. All remaining claims accrued since the entry of the May 12, 1987 Judgment in the following amounts, and the Court finds as follows.

7. Alimony is owed Plaintiff from Defendant in the principal amount of \$8,035.00, plus interest thereon at 12% per annum from the date such alimony became due. The Court finds in favor of the Plaintiff, and finds Plaintiff's testimony and evidence relating to unpaid alimony persuasive, and the Defendant's testimony unpersuasive.

8. Child Support is owed Plaintiff from Defendant in the principal amount of \$25,065.00 through November 1992, plus interest thereon at 12% per annum from the date such Child Support became due. The Court finds in favor of the Plaintiff, and find's Plaintiff's testimony and evidence relating to unpaid Child Support persuasive, and the Defendant's testimony and evidentiary offerings unpersuasive.

9. Unpaid Expenses are owed Plaintiff from Defendant in the principal amount of \$8,697.51 through November 1992, including incidental expenses that Plaintiff incurred as a result of her checking and savings accounts being garnished by Defendant's creditors for sums that Defendant was to pay as a result of the Decree, plus interest thereon at 12% per annum from the date such Unpaid Expense became due. The Court finds in favor of the Plaintiff, and find's Plaintiff's testimony and evidence relating to Unpaid Expenses persuasive, and the Defendant's testimony and evidentiary offerings unpersuasive. Such Unpaid Expenses result from Defendant's failure to comply with the Court's original Decree of Divorce.

10. The Plaintiff, to ensure the continued medical insurability of Christian, the minor child, has provided at her own expense medical insurance coverage in the amount of \$6,900.00, and is entitled to such amount from Defendant in that she had paid the Defendant's obligation to insure that the child's insurance coverage is continuing, plus interest thereon at 12% per annum from the date each such premium payment became due.

11. Defendant was ordered in the Decree of Divorce to obtain and pay for a policy of Life Insurance of not less than \$75,000.00 on his own life for the benefit of Christian Broadbent, and Plaintiff has purchased and maintained such policies of Life Insurance on the life of Defendant. Defendant has failed to prove that he provided such policies of Life Insurance and Plaintiff is owed from Defendant \$9,246.00 through November 1992, plus interest thereon at 12% per annum from the date each such Life Insurance premium became due. The Court finds in favor of the Plaintiff, and find's Plaintiff's testimony and evidence relating to Life Insurance persuasive, and the Defendant's testimony and evidentiary offerings unpersuasive.

12. Plaintiff has substantially prevailed on all issues herein and is entitled to her additional reasonable costs and attorney's fees in connection with these further proceedings in the amount of \$4,145.00, plus interest thereon at the statutory rate from the date of entry hereof.

13. The Court finds that Defendant's response to Plaintiff's Writs of Garnishment has been unpersuasive and appears to be calculated merely to frustrate Plaintiff's attempts to collect the amounts that have been long due and owing her from the Defendant. Defendant's efforts to further frustrate Plaintiff's attempted collection of at least some of the amounts to which she is rightfully entitled appear to the Court to border upon bad faith.

14. The Court finds that Defendant has done little, if anything, to comply with the Court's orders in the original Decree of Divorce.

15. The Court finds that Defendant has made insignificant contributions to the financial needs or other welfare of the minor child, Christian Broadbent, and has essentially left the total responsibility for those obligations to Plaintiff.

16. The Court finds that Plaintiff's costs and attorney's fees have been incurred as a result of Defendant's challenges and demands made herein, that Defendant has failed to prevail, and that Plaintiff is not in a position to pay for her costs and attorney's fees. The Court further finds that considering the conduct of the Defendant throughout these long proceedings and since the Divorce Decree was originally entered, and Defendant's lack of meaningful cooperation, the additional attorney's fees are not only warranted, but in the Court's view, are mandated.

17. The Court is holding a check issued as a result of a Garnishment in the sum of \$15,052.67 made payable to Helen Broadbent, to which Plaintiff is entitled upon the signing of this Order, the amount of the proceeds of which will be noted in the Court's files with an appropriate pleading representing a partial satisfaction of the outstanding Judgments.

18. Neither Plaintiff nor her attorney acted inappropriately in intercepting such check from Freedom Mortgage Corp. and forwarding the same to the Court, and Defendant's Motion for Order to Show Cause is without merit.

CONCLUSIONS OF LAW

19. The Writs of Garnishment are based upon duly entered Judgments, which are enforceable through post-judgment collection proceedings, such as a Writ of Garnishment.

20. Defendant's claims that the amounts sought through the Writs of Garnishment are excessive are unsupported. There is no evidence suggesting that Plaintiff's calculations as set forth in the Writs of Garnishment are inappropriate.

21. Defendant's Motion for Order to Show Cause is without merit, and should be dismissed.

22. Plaintiff is entitled to the following principal amounts calculated through November 1992, and interest amounts thereon calculated through March 10, 1993:

Judgment of May 12, 1987	\$7,196.50	principal
	<u>6,769.34</u>	interest
	13,965.84	Subtotal
Unpaid Alimony	\$8,035.00	
Unpaid Child Support	25,065.00	
Unpaid Expenses	8,697.51	
Health Insurance Reimbursement	6,900.00	
Life Insurance Reimbursement	9,246.00	
Interest on Unpaid Amounts	29,261.89	
Attorney's Fees and Costs	<u>6,342.81</u>	
	93,548.21	Subtotal
	\$107,514.05	TOTAL

Plaintiff is further entitled to interest on the total amount of \$107,514.05 at the statutory rate, \$35.34 per diem from March 10, 1993, until paid. All funds collected pursuant to such amounts shall be applied to the oldest obligations first.

ORDER

Based on the foregoing and good reason appearing therefore it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

23. The Court overrules the Defendant's Objections to the Writs of Garnishment finding them to be without merit.

24. Judgment shall be entered in favor of Plaintiff and against Defendant in the following principal amounts calculated through November 1992, and interest amounts thereon calculated through March 10, 1993:

Judgment of May 12, 1987	\$7,196.50	principal
	<u>6,769.34</u>	interest
	13,965.84	Subtotal
Unpaid Alimony	\$8,035.00	
Unpaid Child Support	25,065.00	
Unpaid Expenses	8,697.51	
Health Insurance Reimbursement	6,900.00	
Life Insurance Reimbursement	9,246.00	
Interest on Unpaid Amounts	29,261.89	
Attorney's Fees and Costs	<u>6,342.81</u>	
	93,548.21	Subtotal
	\$107,514.05	TOTAL

25. Judgment shall be entered in favor of Plaintiff and against Defendant for interest on the total amount of \$107,514.05 at the statutory rate, \$35.34 per diem from March 10, 1993, until paid.

26. All funds collected pursuant to such amounts shall be applied to the oldest obligations first.

27. Plaintiff may proceed to obtain the funds being held by the parties garnished, to satisfy the outstanding Judgments heretofore awarded in favor of the Plaintiff and against the Defendant.

28. Plaintiff may augment the amounts of such outstanding Judgments by her costs of collection, including a reasonable attorney's fee.

29. Defendant shall obtain and pay for appropriate Life Insurance as ordered in the Decree of Divorce within 45 days of the date of the Memorandum Decision (April 28, 1993), and supply to Plaintiff and her attorney proof of said insurance. If Defendant fails to do so without adequate explanation, the Court shall consider issues of contempt and the potential sanctions therefore, including incarceration.

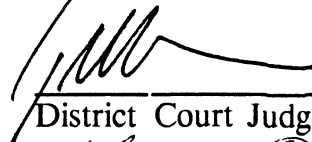
30. Such issues of contempt and sanctions, including incarceration, shall be considered should there be any evidence that Defendant continues to ignore the Court's Orders regarding his responsibility towards the Plaintiff and the minor child.

31. Counsel for Plaintiff is to prepare Findings of Fact, Conclusions of Law, and an appropriate Order in conformity with the Court's Memorandum Decision, and submit the same to the Court for review and signature pursuant to the Code of Judicial Administration.

32. Defendant's Motion for Order to Show Cause is denied.

DATED this 28 ^{June} day of ~~May~~, 1993.

BY THE COURT:



District Court Judge
Evelyn Thompson
Attest

CERTIFICATE OF MAILING

I certify that I caused the foregoing to be served upon Defendant by mailing a true copy of the same, first class United States mail, to the following on this 30th day of April, 1993: ~~ALSO SENT A COPY OF THE JUDGMENT.~~

M. Joy Jelte, Esq.
CORPORON & WILLIAMS, P.C.
310 South Main Street, Suite 1400
Salt Lake City, Utah 84101



James L. Thompson